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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

BOBBY CHOI,

Defendant and Appellant.

B210937

(Los Angeles County
Super. Ct. No. BA338656)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Stephen A. Marcus, Judge. Affirmed.

Ann Krausz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant Bobby Choi, aka Michael L. Yu, appeals from the judgment entered following a jury trial that resulted in his conviction of leaving the scene of an accident in violation of Vehicle Code section 20001, subdivision (a). Following our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441 (*Wende*), we affirm.

FACTS

Viewed in accordance with the usual rules on appeal (*People v. Kraft* (2000) 23 Cal.4th 978, 1053), the evidence established that at 5:30 a.m., on April 8, 2008, a Los Angeles police officer on patrol observed defendant run several red lights as he drove north on Highland Avenue at about 80 miles per hour. After running the red light at Highland and Santa Monica Boulevard, defendant collided with the truck in which Yessenia Cortes was driving and Olga Mendoza was a passenger. Mendoza received a head laceration that required 10 staples to close. Cortes and Mendoza never saw the driver of the car that hit them.

Dwayne Taylor saw the collision occur. About 10 seconds later, Taylor saw an Asian male jump out of the driver's-side window of the car that hit the truck. As this man ran away, he did not yell for help and he ignored Taylor's calls for him to stop. Within a few minutes, the fleeing man was restrained by other bystanders. Taylor identified defendant to the police as the person he saw jump out of the car window and run away.

Over defense objection, Los Angeles Police Officer Brian Albonetti testified that he spoke to defendant at the scene, and in response to Albonetti's questions, defendant said that he was not in possession of a driver's license and that his name was Michael Lee Yu.¹

¹ At an Evidence Code section 402 hearing on the admissibility of defendant's statements to Albonetti before he was given his *Miranda* rights (*Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*)), Albonetti testified that before he asked defendant any questions, Albonetti handcuffed him because defendant was suspected of being a hit-and-run driver. The first question Albonetti asked defendant was for identification. After defendant said he did not have any identification, Albonetti asked his name. Defendant

PROCEDURAL BACKGROUND

Defendant was charged by information with leaving the scene of an accident involving injury. (Veh. Code, § 20001, subd. (a).) Enhancements were alleged for infliction of great bodily injury (Pen. Code, § 12022.7, subd. (a)) and prior convictions (Pen. Code, §§ 1170.12, subds. (a)-(d), 667, subds. (a)(1), (b)-(i) & 667.5, subd. (b)).²

In June 2008, the trial court denied defendant's *Marsden* motion.³ At the hearing on that motion, defendant objected to defense counsel's request for a continuance (the case was 54 of 60) and to a psychiatric evaluation. Defense counsel explained that she wanted the continuance so that the judge who had been presiding over the case could hear a section 995 motion which that judge had indicated she would grant; counsel also expressed concern about defendant's competence to assist in his own defense, as well as his state of mind at the time of the accident. The trial court denied the motion and found good cause for a continuance.

The evidentiary portion of the trial commenced on July 15, 2008, and concluded on July 16, 2008. Defendant's section 1118.1 motion was denied. The theory of defense was defendant did not willfully fail to perform the statutorily imposed duties; rather, he was apprehended before he had an opportunity to perform those duties.⁴ The trial court

responded, "Michael Lee Yu." Suspicious that defendant had given a false name, Albonetti placed him in the patrol car, activated a recording device, and repeated his question. The trial court concluded that, notwithstanding the fact that defendant was handcuffed, defendant's statement to Albonetti was admissible under *Berkemer v. McCarty* (1984) 468 U.S. 420, 439-440 [answers to investigatory questions by a police officer who lawfully detains a person pursuant to a traffic stop are admissible even if the person was not given *Miranda* warnings].

² Unless otherwise specified, undesignated statutory references are to the Penal Code.

³ *People v. Marsden* (1970) 2 Cal.3d 118.

⁴ These duties are set forth in Vehicle Code section 20001, subdivision (a) ["The driver of a vehicle involved in an accident resulting in injury to a person, other than himself . . . shall *immediately* stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 . . ." (italics added)]. Vehicle Code section 20003,

sustained an objection to the following argument: “He did immediately stop the vehicle. Maybe not of his own accord, obviously it crashed. Perhaps it couldn’t have been driven. But the vehicle was stopped immediately. [¶] The remainder of the duties does not have that immediate requirement. So could he have run around the block, screaming obscenities, yelling at the victims, blaming them for the damage, doing all sorts of really offensive things and then come to his senses and said okay. Okay. I’m sorry. Are you okay? Yes. . . .” The trial court denied defense counsel’s request to reopen closing argument to argue that, although a driver must stop immediately, there are no temporal requirements as to the other duties and one may have a change of heart and belatedly perform his or her statutory duty and thus not have violated Vehicle Code section 20001. The trial court reasoned that the argument was improperly speculative because there was no evidence that defendant was going to return to the scene to perform his duties.

During deliberations, the jury submitted the following question: “Is Michael Lee Yu an alias or AKA for Bobby Choi? Is there any evidence that was also a name this person used?” As to the first question, the trial court told the jury that it could not answer because it was a legal conclusion; as to the second question, it had Albonetti’s testimony read back. That afternoon, the jury returned a guilty verdict. After defendant admitted the alleged priors, the People struck one of the two priors alleged pursuant to the Three Strikes law (a juvenile robbery conviction).

Defendant was sentenced to six years comprised of the three-year high term doubled pursuant to the Three Strikes law; the trial court struck the section 667.5 prior

subdivision (a) provides: “The driver of any vehicle involved in an accident resulting in injury to or death of any person shall also give his or her name, current residence address . . . the registration number of the vehicle he or she is driving, and the name and current residence address of the owner to the person struck or the driver or occupants of any vehicle collided with, and shall give the information to any traffic or police officer at the scene of the accident. The driver also shall render to any person injured in the accident reasonable assistance, including transporting, or making arrangements for transporting, any injured person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if that transportation is requested by any injured person.”

and ordered restitution and various statutory fines and fees. The trial court based its selection of the high term on “both the facts of this particular case and based upon his prior record,” which included convictions for first degree burglary, possession of dangerous drugs, being an ex-felon in possession of a weapon, and making terrorist threats. Defendant received 205 days of presentence custody credit comprised of 137 days actual custody and 68 days of good conduct credit.

He filed a timely notice of appeal.

We appointed counsel to represent defendant on this appeal. After examination of the record, appointed counsel filed an opening brief which did not raise any arguable issues and requested that we independently review the record pursuant to *Wende, supra*, 25 Cal.3d 436.

On April 6, 2009, we advised defendant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. Defendant submitted no contentions.

We have examined the entire record and are satisfied that appointed counsel has fully complied with her responsibilities and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

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RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

BIGELOW, J.